

FIRST REGULAR SESSION

SENATE BILL NO. 659

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2570S.011

AN ACT

To repeal sections 194.119, 436.027, 436.031, RSMo, and to enact in lieu thereof three new sections relating to final disposition of a dead human body.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 194.119, 436.027, and 436.031, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 194.119,
3 436.027, and 436.031, to read as follows:

194.119. 1. As used in this section, the term "right of sepulcher" means
2 the right to choose and control the burial, cremation, or other final disposition of
3 a dead human body.

4 2. For purposes of this chapter and chapters 193, 333, and 436, RSMo,
5 and in all cases relating to the custody, control, and disposition of deceased
6 human remains, including the common law right of sepulcher, where not
7 otherwise defined, the term "next-of-kin" means the following persons in the
8 priority listed if such person is eighteen years of age or older, is mentally
9 competent, and is willing to assume responsibility for the costs of disposition:

10 (1) **An attorney-in-fact under a durable power of attorney that**
11 **expressly refers to granting the right of sepulcher;**

12 (2) The surviving spouse;

13 [(2)] (3) Any surviving child of the deceased. If a surviving child is less
14 than eighteen years of age and has a legal or natural guardian, such child shall
15 not be disqualified on the basis of the child's age and such child's legal or natural
16 guardian, if any, shall be entitled to serve in the place of the child unless such
17 child's legal or natural guardian was subject to an action in dissolution from the
18 deceased. In such event the person or persons who may serve as next-of-kin shall

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 serve in the order provided in subdivisions (3) to (8) of this subsection;

20 ~~[(3)]~~ (4) (a) Any surviving parent of the deceased; or

21 (b) If the deceased is a minor, a surviving parent who has custody of the
22 minor; or

23 (c) If the deceased is a minor and the deceased's parents have joint
24 custody, the parent whose residence is the minor child's residence for purposes
25 of mailing and education;

26 ~~[(4)]~~ (5) Any surviving sibling of the deceased;

27 ~~[(5)]~~ Any person designated by the deceased to act as next-of-kin pursuant
28 to a valid designation of right of sepulcher as provided in subsection 8 of this
29 section;]

30 (6) The next nearest surviving relative of the deceased by consanguinity
31 or affinity;

32 (7) Any person or friend who assumes financial responsibility for the
33 disposition of the deceased's remains if no next-of-kin assumes such
34 responsibility;

35 (8) The county coroner or medical examiner; provided however that such
36 assumption of responsibility shall not make the coroner, medical examiner, the
37 county, or the state financially responsible for the cost of disposition.

38 3. The next-of-kin of the deceased shall be entitled to control the final
39 disposition of the remains of any dead human being consistent with all applicable
40 laws, including all applicable health codes.

41 4. A funeral director or establishment is entitled to rely on and act
42 according to the lawful instructions of any person claiming to be the next-of-kin
43 of the deceased; provided however, in any civil cause of action against a funeral
44 director or establishment licensed pursuant to this chapter for actions taken
45 regarding the funeral arrangements for a deceased person in the director's or
46 establishment's care, the relative fault, if any, of such funeral director or
47 establishment may be reduced if such actions are taken in reliance upon a
48 person's claim to be the deceased person's next-of-kin.

49 5. Any person who desires to exercise the right of sepulcher and who has
50 knowledge of an individual or individuals with a superior right to control
51 disposition shall notify such individual or individuals prior to making final
52 arrangements.

53 6. If an individual with a superior claim is personally served with written
54 notice from a person with an inferior claim that such person desires to exercise

55 the right of sepulcher and the individual so served does not object within
56 forty-eight hours of receipt, such individual shall be deemed to have waived such
57 right. An individual with a superior right may also waive such right at any time
58 if such waiver is in writing and dated.

59 7. If there is more than one person in a class who are equal in priority
60 and the funeral director has no knowledge of any objection by other members of
61 such class, the funeral director or establishment shall be entitled to rely on and
62 act according to the instructions of the first such person in the class to make
63 arrangements; provided that such person assumes responsibility for the costs of
64 disposition and no other person in such class provides written notice of his or her
65 objection.

66 [8. Any person may designate an individual to be his or her closest
67 next-of-kin, regardless of blood or marital relationship, by means of a written
68 instrument that is signed, dated, and verified. Such designation of right of
69 sepulcher shall be witnessed by two persons, and shall contain the names and
70 last known address of each person entitled to be next-of-kin but for the execution
71 of the designation of right of sepulcher and who are higher in priority than the
72 person so designated.]

436.027. **For each preneed contract sold after August 28, 2007,**
2 the seller may retain as his own money, for the purpose of covering his selling
3 expenses, servicing costs, and general overhead, the initial funds so collected or
4 paid until he has received for his use and benefit an amount not to exceed
5 [twenty] **five** percent of the total amount agreed to be paid by the purchaser of
6 such prepaid funeral benefits as such total amount is reflected in the
7 contract. **All funds above the initial five percent shall be placed and**
8 **held in trust. Contracts funded by joint accounts shall have held and**
9 **placed one hundred percent of the amount paid by the purchaser of the**
10 **total amount agreed to be paid by the purchaser of such prepaid**
11 **funeral benefits as such total amount is reflected in the contract.**

436.031. 1. The trustee of a preneed trust shall be a state or federally
2 chartered financial institution authorized to exercise trust powers in
3 Missouri. The trustee shall accept all deposits made to it by the seller of a
4 preneed contract and shall hold, administer, and distribute such deposits, in
5 trust, as trust principal, pursuant to the provisions of sections 436.005 to
6 436.071. Payments regarding two or more preneed contracts may be deposited
7 into and commingled in the same preneed trust, so long as the trust's grantor is

8 the seller of all such preneed contracts and the trustee maintains adequate
9 records of all payments received.

10 2. All property held in a preneed trust, including principal and
11 undistributed income, shall be invested and reinvested by the trustee
12 thereof. The trustee shall exercise such judgment and care under circumstances
13 then prevailing which men of ordinary prudence, discretion, and intelligence
14 exercise in the management of their own affairs, not in regard to speculation but
15 in regard to the permanent disposition of their funds, considering the probable
16 income therefrom as well as the probable safety of their capital. A preneed trust
17 agreement may provide that when the principal and interest in a preneed trust
18 exceeds two hundred fifty thousand dollars, investment decisions regarding the
19 principal and undistributed income may be made by a federally registered or
20 Missouri-registered independent qualified investment advisor designated by the
21 seller who established the trust; provided, that title to all investment assets shall
22 remain with the trustee and be kept by the trustee to be liquidated upon request
23 of the advisor of the seller. In no case shall control of said assets be divested
24 from the trustee nor shall said assets be placed in any investment which would
25 be beyond the authority of a reasonably prudent trustee to invest in. The trustee
26 shall be relieved of all liability regarding investment decisions made by such
27 qualified investment advisor.

28 3. The seller of a preneed contract shall be entitled to all income,
29 including, without limitation, interest, dividends, and capital gains, and losses
30 generated by the investment of preneed trust property regarding such contract,
31 and the trustee of the trust may distribute all income, net of losses **and**
32 **expenses**, to the seller at least annually; but no such income distribution shall
33 be made to the seller if, and to the extent that, the distribution would reduce the
34 aggregate market value on the distribution date of all property held in the
35 preneed trust, including principal and undistributed income, below the sum of all
36 deposits made to such trust pursuant to subsection 1 of this section for all
37 preneed contracts then administered through such trust. **On all contracts**
38 **between purchaser and seller sold after August 28, 2007, such net**
39 **income may only be distributed upon receipt of the certification from**
40 **the provider as set out in section 436.045.**

41 4. All expenses of establishing and administering a preneed trust,
42 including, without limitation, trustee's fees, legal and accounting fees,
43 **management fees**, investment expenses, and taxes, shall be paid [or reimbursed

44 directly by the seller of the preneed contracts administered through such trust]
45 **from the income from said preneed trust** and shall not be paid from the
46 principal of [a] **said** preneed trust.

47 5. The trustee of a preneed trust shall maintain adequate books of account
48 of all transactions administered through the trust and pertaining to the trust
49 generally. The trustee shall assist seller who established the trust or its
50 successor in interest in the preparation of the annual report described in
51 subdivision (3) of subsection 2 of section 436.021. The seller shall furnish to each
52 contract purchaser, within fifteen days after receipt of the purchaser's written
53 request, a written statement of all deposits made to such trust regarding such
54 purchaser's contract.

55 6. The trustee of a preneed trust shall, from time to time, distribute trust
56 principal as provided by sections 436.005 to 436.071.

57 7. A preneed trust shall terminate when trust principal no longer includes
58 any payments made under any preneed contract, and upon such termination the
59 trustee shall distribute all trust property, including principal and undistributed
60 income, to the seller which established the trust.

Bill ✓

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